REMARKS

Applicants respectfully request consideration of the application in view of the foregoing amendments and election.

I. Formal Objection To The Specification

Page 1 of the specification was objected to for failing to reflect the status of the parent applications.

Applicants have amended page 1 of the specification to recite, "This application is the National Stage of International Application No. PCT/US00/19980, filed July 20, 2000, which claims the benefit of U.S. Provisional Application No. 60/144,992, filed July 22, 1999." Accordingly, Applicants respectfully request this objection be withdrawn.

II. Lack Of Unity Under 35 U.S.C. §§ 121, 372

The Examiner required restriction between Groups I to CCXXXIV as these inventions or groups of inventions allegedly are not so linked as to form a single general inventive concept under PCT Rule 13.1.

Applicants hereby elect, **with traverse**, Group XV, claims 3-7, 11-12, 43-55, 85 and 87-93, drawn to an isolated polynucleotide, a recombinant polynucleotide, a cell, an array, and a microarry. The polynucleotide of Group XV encodes the polypeptide of SEQ ID NO:2, including the nucleic acid of SEQ ID NO:17. Applicants traverse the restriction requirement on the grounds that the search and examination of at least Groups II and XV (drawn to polypeptides of SEQ ID NO:2 and polynucleotides encoding the polypeptide of SEQ ID NO:2, including the nucleic acid of SEQ ID NO:17) is not unduly burdensome as the polynucleotides of Group XV encode the polypeptide of SEQ ID NO:2.

The unity of invention standard must be applied in national stage applications. Section 1850 of the Manual of Patent Examining Procedure (original 8th edition, published August, 2001) (hereinafter "MPEP") provides that

> when the Office considers international applications . . . during the national stage as a Designated or Elected Office under 35 U.S.C. 371, PCT Rule 13.1 and 13.2 will be followed when considering unity of invention of claims of different categories without regard to the practice in national applications filed under 35 U.S.C. 111 . . . .
>
> . . . .
>
> In applying PCT Rule 13.2 to ... national stage applications under 35 U.S.C. 371, examiners should consider for unity of invention all the claims to different categories of invention in the application and permit retention in the same application for searching and/or preliminary examination, claims to the categories which meet the requirements of PCT Rule 13.2 . . . .

Id. at page 1800-60 to -61.

MPEP section 1893.03(d) reiterates the Examiner's obligation to apply the Unity of Invention standard PCT Rule 13.2 instead of U.S. restriction/election of species practice:

> Examiners are reminded that unity of invention (not restriction) practice is applicable . . . in national stage (filed under 35 U.S.C. 371) applications.

Id. at page 1800-149, col. 1.

Indeed, according to Example 17, Part 2 of Annex B to the PCT Administrative Instructions, the Examiner is obliged to find that "the protein and the DNA sequence exhibit corresponding special technical features" and that, therefore, there is no lack of unity between claims directed to a protein "X" and the DNA sequence that encodes protein "X."

Thus, in the present case, unity of invention does exist at least as between claims 1-2, 9, 16-18, 30-42 and 56-68 and claims 3-7, 11-12, 43-55, 85 and 87-93, which cover the polypeptide depicted in SEQ ID NO. 2 and the DNA depicted in SEQ ID NO. 17, which encodes that polypeptide.

If there are any fees due in connection with the filing of this response, please charge the fees to Deposit Account No. 19-0741. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should be charged to our Deposit Account.

Respectfully submitted,

Date 6 July 2004 By _____

FOLEY & LARDNER LLP

Robert M. Norway
Attorney for Applicant
Registration No. 54,608

Customer Number: 22428

Washington Harbour
3000 K Street, N.W., Suite 500
Washington, D.C. 20007-5143
Telephone: (202) 295-4024
Facsimile: (202) 672-5399